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Health And Welfare Trust Fund for Northern California, et al.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

OPERATING ENGINEERS' HEALTH AND
WELFARE TRUST FUND FOR NORTHERN
CALIFORNIA; DAN REDING AND JAMES E.
MURRAY, TRUSTEES;

PENSION TRUST FUND FOR OPERATING
ENGINEERS; DAN REDING AND JAMES E.
MURRAY, TRUSTEES;

PENSIONED OPERATING ENGINEERS' HEALTH
AND WELFARE TRUST FUND; DAN REDING
AND JAMES E. MURRAY, TRUSTEES;

OPERATING ENGINEERS AND PARTICIPATING
EMPLOYERS PREAPPRENTICE, APPRENTICE
AND JOURNEYMEN AFFIRMATIVE ACTION
TRAINING FUND; DAN REDING AND JAMES E.
MURRAY, TRUSTEES; AND

OPERATING ENGINEERS LOCAL UNION NO. 3
VACATION, HOLIDAY AND SICK PAY TRUST
FUND; DAN REDING AND JAMES E. MURRAY,
TRUSTEES,

Plaintiffs,

v.

BROTHERTON CORPORATION, a California
Corporation,

Defendant.

Case No.

COMPLAINT

Parties

1. The Operating Engineers' Health and Welfare Trust Fund for Northern California (which includes the Addiction Recovery Program, Inc.); Pension Trust Fund for Operating Engineers (which includes the Pension Plan for the Pension Trust Fund for Operating Engineers, and the Operating Engineers Annuity Plan); Pensioned Operating Engineers' Health and Welfare Trust Fund ("Pensioned Health Fund"); Operating Engineers and Participating Employers Pre-apprentice, Apprentice and Journeymen Affirmative Action Training Fund ("Affirmative Action Training Fund"); and the Operating Engineers Local Union No. 3 Vacation, Holiday and Sick Pay Trust Fund (which includes the Operating Engineers Local Union No. 3 Vacation, Holiday and Sick Pay Trust Administrative Fund) ("Vacation Fund") (collectively referred to hereinafter as the "Trust Funds"), are employee benefit plans as defined in the Employee Retirement Income Security Act of 1974 ("ERISA") § 3(3), 29 U.S.C. § 1002(3). The Trust Funds and their fiduciaries are together referred to herein as "ERISA Plaintiffs" or "Plaintiffs." Dan Reding and James E. Murray are Co-Chairmen of the Joint Boards of Trustees of ERISA Plaintiffs with authority to act on behalf of all Trustees.

3. Brotherton Corporation, a California corporation, ("Defendant") is an employer by virtue of ERISA § 3(5), 29 U.S.C. § 1002(5), and NLRA § 2(2), 29 U.S.C. § 152(2).

Jurisdiction

4. Jurisdiction exists in this Court over the claims asserted by ERISA Plaintiffs by virtue of ERISA § 502, 29 U.S.C. § 1132, in that Plaintiffs seek to enforce the provisions of ERISA and the terms of their plans, seek to enjoin the acts and practices which violate ERISA, seek equitable relief to redress such violations, and seek all other appropriate relief under ERISA.

5. Jurisdiction exists in this Court over all the claims by virtue of LMRA § 301, 29 U.S.C. § 185, in that Plaintiffs seek to enforce the terms and conditions of a valid Bargaining Agreement.

6. To the extent jurisdiction over any claim does not exist under ERISA or the LMRA, supplemental jurisdiction exists in this Court over such claims by virtue of 29 U.S.C. § 1367 in that they arise out of a common nucleus of operative facts that form the basis of the federal claims asserted herein, each of which has a substantial ground in federal jurisdiction.

Venue

1 and Trust Agreements.

2 12. Under the Bargaining Agreement and Trust Agreements, which are incorporated into the
3 Bargaining Agreement and made binding on Defendant, Defendant is required to regularly pay to
4 ERISA Plaintiffs, the Bargained Plan, and the Union, certain sums of money, the amounts of which are
5 determined by the hours worked by Defendants' employees. Contributions are due on the fifteenth
6 (15th) day of the month following the month in which hours were worked, and are considered
7 delinquent if not received by the twenty-fifth (25th) day of that month. Defendant is also required,
8 pursuant to the Bargaining and Trust Agreements, to pay liquidated damages in the amount of ten
9 percent (10%) for each delinquent contribution, but in the amount of twenty percent (20%) for each
10 delinquent contribution which is the subject of litigation. Moreover, the Bargaining and Trust
11 Agreements provide that interest accrues on delinquent contributions at the rates reasonably set by the
12 Trustees from the date they become delinquent, which is the twenty-sixth (26th) day of the month in
13 which payment was due, until paid in full.

14 13. The Bargaining and Trust Agreements further require Defendant to maintain time records
15 or time cards, and to permit an authorized Trust Fund representative to examine such records of
16 Defendant as is necessary to determine whether Defendant has made full payment of all sums owed to
17 ERISA Plaintiffs. Should an audit of Defendants' records reveal Defendant has failed to provide full and
18 prompt payment of all sums due to Plaintiffs, Defendant must reimburse Plaintiffs for the amounts due,
19 including audit fees, in addition to any other obligations pursuant to the Bargaining and Trust
20 Agreements.

21 Factual Allegations

22 14. Defendant has failed and refused to pay amounts due to Plaintiffs as a result of an audit
23 of Defendant's payroll records for the period of January 1, 2013 through December 31, 2017.
24 Liquidated damages and interest have been incurred and are owed to Plaintiffs for the unpaid
25 contributions for this period.

26 15. Defendant has failed to submit contribution reports and payments (if applicable) for hours
27 worked by their employees during the period from January 2019 through May 2019. Defendant has also
28 failed to timely pay all contributions reported as due for work performed by their employees during the

1 period from October 2015, February 2016, July 2016, September 2016 through November 2016, July
2 through October 2017, May 2018 through November 2018 and during the month of June 2019, incurring
3 liquidated damages and interest that are owed to Plaintiffs for the late-paid contributions for this period.

4 16. Plaintiffs are also entitled to recover any and all other contributions, and all liquidated
5 damages and interest on delinquent contributions not specified above, found due on timecards, audit, or
6 otherwise, including estimated contributions for any months Defendant failed to report to Plaintiffs,
7 through the time of Judgment. Plaintiffs reserve the right to conduct an audit to determine whether there
8 are any additional amounts due from Defendant.

9 **FIRST CAUSE OF ACTION**
10 **For Payment of Delinquent Contributions, Interest, Liquidated Damages,**
Attorneys' Fees and Costs Against Defendant

11 17. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 15, above.

12 18. Defendant has a contractual duty to timely pay the required contributions to Plaintiffs and
13 the Bargained Plan, and to timely pay dues to the Union, pursuant to the Bargaining Agreements and
14 Trust Agreements. Defendant also has a contractual duty under the Bargaining Agreements and Trust
15 Agreements to permit an audit of their records to determine whether they are making full and prompt
16 payment of all sums required to be paid by them to Plaintiffs, and to pay Plaintiffs all amounts found
17 due as a result of an audit, including audit fees.

18 19. In addition, Defendant has a statutory duty to timely make the required payments to
19 Plaintiffs under ERISA § 515, 29 U.S.C. § 1145, and LMRA § 301(a).

20 20. By failing to make the required payments to Plaintiffs, Defendant breached the
21 Bargaining and Trust Agreements and are in violation of ERISA § 515, 29 U.S.C. § 1145, and LMRA §
22 301(a).

23 21. Defendants' failure and refusal to pay the required contributions was at all times, and still
24 is, willful. Defendant continues to breach the Bargaining Agreements, and incorporated Trust
25 Agreements, by failing to pay all amounts owed as alleged. Said refusal is unjustified and done with
26 knowledge and intent.

27 22. ERISA Plaintiffs are without an adequate remedy at law and will suffer continuing and
28 irreparable injury, loss and damage unless Defendant is ordered specifically to perform all obligations

required on Defendants' part to be performed under ERISA, 29 U.S.C. §§ 1101-1381, the LMRA, 29 U.S.C. §§ 141-197, and the Bargaining and Trust Agreements, and are restrained from continuing to refuse to perform as required thereunder.

23. This Court is authorized to issue injunctive relief based on the traditional standard. As set forth above, ERISA Plaintiffs have a strong likelihood of success on the merits. There is the possibility that ERISA Plaintiffs' Trust Funds and their participants will suffer irreparable injuries. The balance of hardships and advancement of public interest favor ERISA Plaintiffs.

24. This Complaint does not in any manner relate to statutory withdrawal liability that may or may not be assessed against Defendant. ERISA Plaintiffs expressly reserve the right to pursue any such withdrawal liability claims against Defendant as provided by ERISA Plaintiffs' Plan Documents, Trust Agreements, and the law.

Prayer

WHEREFORE, Plaintiffs pray as follows:

1. For a judgment against Defendant as follows:

(a) Any unpaid contributions, due at time of Judgment, including those specified above as well as any other contributions determined as due by audit, timecards, or otherwise, including estimated contributions for any months Defendant fails to report to Plaintiffs, pursuant to ERISA § 502(g)(2)(A), 29 U.S.C. § 1132(g)(2)(A);

i. To ERISA Plaintiffs and the Bargained Plan, in accordance with ERISA § 502(g)(2)(A), 29 U.S.C. § 1132(g)(2)(A) and the Bargaining Agreements;

ii. To the Union in accordance with the Bargaining Agreements.

(b) Liquidated damages on all late-paid and unpaid contributions in an amount provided for under the Bargaining and Trust Agreements, and with respect to ERISA Plaintiffs, ERISA § 502(g)(2)(c), 29 U.S.C. § 1132(g)(2)(c).

(c) Interest on all late-paid and unpaid contributions at the rates set in accordance with the Bargaining Agreements, the Trust Agreements, and ERISA § 502(g)(2)(B), 29 U.S.C. § 1132(g)(2)(B).

2. Plaintiffs' reasonable attorneys' fees and costs of this action, including any audit fees, in

1 accordance with ERISA § 502(g)(2)(D) and (E), 29 U.S.C. § 1132(g)(2)(D) and (E); and in accordance
2 with the Bargaining Agreements for each Bargained Plan; and with LMRA § 301, 29 U.S.C. § 185, for
3 all Plaintiffs.

4 3. For an order,

5 (a) requiring that Defendant comply with their obligations to Plaintiffs under the
6 terms of the Bargaining Agreements and the Trust Agreements;

7 (b) enjoining Defendant from violating the terms of those documents and of ERISA;
8 and

9 (c) enjoining Defendant from disposing of any assets until said terms have been
10 complied with, and from continuation or operation of Defendants' business until said terms have been
11 complied with.

12 4. That the Court retain jurisdiction of this case pending compliance with its orders.

13 5. For such other and further relief as the Court may deem just and proper.

14 DATED: October 24, 2019

SALTZMAN & JOHNSON LAW CORPORATION

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16 By: /S/Allan D. Shuldiner

Allan D. Shuldiner

17 Attorneys for Operating Engineers' Health And
18 Welfare Trust Fund, et al.
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